

INDIANA CRIMINAL GANG LAW

IC 35-45-9

Chapter 9. Criminal Gang Control

IC 35-45-9-1

"Criminal gang" defined

Sec. 1. As used in this chapter, "criminal gang" means a group with at least three (3) members that specifically:

(1) either:

(A) promotes, sponsors, or assists in; or

(B) participates in; or

(2) requires as a condition of membership or continued membership;

the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).

As added by P.L.180-1991, SEC.11. Amended by P.L.140-1994, SEC.5; P.L.192-2007, SEC.9.

IC 35-45-9-2

"Threatens" defined

Sec. 2. As used in this chapter, "threatens" includes a communication made with the intent to harm a person or the person's property or any other person or the property of another person.

As added by P.L.180-1991, SEC.11.

IC 35-45-9-3

Participation in criminal gang; offense

Sec. 3. A person who knowingly or intentionally actively participates in a criminal gang commits criminal gang activity, a Class D felony.

As added by P.L.180-1991, SEC.11.

IC 35-45-9-4

Threats; refusal to join or withdrawal from gang; intimidation offense

Sec. 4. A person who threatens another person because the other person:

(1) refuses to join a criminal gang; or

(2) has withdrawn from a criminal gang;

commits criminal gang intimidation, a Class C felony.

As added by P.L.180-1991, SEC.11.

IC 35-45-9-5

Criminal gang recruitment

Sec. 5. (a) Except as provided in subsection (b), an individual who knowingly or intentionally solicits, recruits, entices, or intimidates another individual to join a criminal gang commits criminal gang recruitment, a Class D felony.

(b) The offense under subsection (a) is a Class C felony if:

- (1) the solicitation, recruitment, enticement, or intimidation occurs within one thousand (1,000) feet of school property; or
- (2) the individual who is solicited, recruited, enticed, or intimidated is less than eighteen (18) years of age.

As added by P.L.192-2007, SEC.10.

IC 35-45-9-6

Restitution

Sec. 6. In addition to any sentence or fine imposed on a criminal **gang** member for committing a felony or misdemeanor, the court shall order a criminal **gang** member convicted of a felony or misdemeanor to make restitution to the victim of the crime under IC 35-50-5-3.

As added by P.L.192-2007, SEC.11.

IC 31-30

ARTICLE 30. JUVENILE LAW: JUVENILE COURT JURISDICTION

IC 31-30-1-4

Juvenile court lacks jurisdiction over individuals at least 16 years of age committing certain felonies; retention of jurisdiction by court having adult criminal jurisdiction

Sec. 4. (a) The juvenile court does not have jurisdiction over an individual for an alleged violation of:

- (1) IC 35-41-5-1(a) (attempted murder);
 - (2) IC 35-42-1-1 (murder);
 - (3) IC 35-42-3-2 (kidnapping);
 - (4) IC 35-42-4-1 (rape);
 - (5) IC 35-42-4-2 (criminal deviate conduct);
 - (6) IC 35-42-5-1 (robbery) if:
 - (A) the robbery was committed while armed with a deadly weapon; or
 - (B) the robbery results in bodily injury or serious bodily injury;
 - (7) IC 35-42-5-2 (carjacking);
 - (8) IC 35-45-9-3 (**criminal gang activity**);
 - (9) IC 35-45-9-4 (**criminal gang intimidation**);
 - (10) IC 35-47-2-1 (carrying a handgun without a license), if charged as a felony;
 - (11) IC 35-47-10 (children and firearms), if charged as a felony;
 - (12) IC 35-47-5-4.1 (dealing in a sawed-off shotgun); or
 - (13) any offense that may be joined under IC 35-34-1-9(a)(2) with any crime listed in subdivisions (1) through (12);
- if the individual was at least sixteen (16) years of age at the time of the alleged violation.

(b) The juvenile court does not have jurisdiction for an alleged violation of manufacturing or dealing in cocaine or a narcotic drug (IC 35-48-4-1), dealing in methamphetamine (IC 35-48-4-1.1), dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2), or dealing in a schedule

IV controlled substance (IC 35-48-4-3), if:

(1) the individual has a prior unrelated conviction under IC 35-48-4-1, IC 35-48-4-1.1, IC 35-48-4-2, or IC 35-48-4-3; or

(2) the individual has a prior unrelated juvenile adjudication that, if committed by an adult, would be a crime under IC 35-48-4-1, IC 35-48-4-1.1, IC 35-48-4-2, or IC 35-48-4-3; and the individual was at least sixteen (16) years of age at the time of the alleged violation.

(c) Once an individual described in subsection (a) or (b) has been charged with any crime listed in subsection (a) or (b), the court having adult criminal jurisdiction shall retain jurisdiction over the case even if the individual pleads guilty to or is convicted of a lesser included offense. A plea of guilty to or a conviction of a lesser included offense does not vest jurisdiction in the juvenile court.

As added by P.L.1-1997, SEC.13. Amended by P.L.17-2001, SEC.7; P.L.151-2006, SEC.12; P.L.216-2007, SEC.35; P.L.67-2008, SEC.2.

IC 35-47-4

Chapter 4. Miscellaneous Provisions

IC 35-47-4-5

Unlawful possession of firearm by serious violent felon

Sec. 5. (a) As used in this section, "serious violent felon" means a person who has been convicted of:

(1) committing a serious violent felony in:

(A) Indiana; or

(B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a serious violent felony; or

(2) attempting to commit or conspiring to commit a serious violent felony in:

(A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2; or

(B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of attempting to commit or conspiring to commit a serious violent felony.

(b) As used in this section, "serious violent felony" means:

(1) murder (IC 35-42-1-1);

(2) voluntary manslaughter (IC 35-42-1-3);

(3) reckless homicide not committed by means of a vehicle (IC 35-42-1-5);

(4) battery as a:

(A) Class A felony (IC 35-42-2-1(a)(5));

(B) Class B felony (IC 35-42-2-1(a)(4)); or

(C) Class C felony (IC 35-42-2-1(a)(3));

(5) aggravated battery (IC 35-42-2-1.5);

(6) kidnapping (IC 35-42-3-2);

(7) criminal confinement (IC 35-42-3-3);

(8) rape (IC 35-42-4-1);

(9) criminal deviate conduct (IC 35-42-4-2);

- (10) child molesting (IC 35-42-4-3);
- (11) sexual battery as a Class C felony (IC 35-42-4-8);
- (12) robbery (IC 35-42-5-1);
- (13) carjacking (IC 35-42-5-2);
- (14) arson as a Class A felony or Class B felony (IC 35-43-1-1(a));
- (15) burglary as a Class A felony or Class B felony (IC 35-43-2-1);
- (16) assisting a criminal as a Class C felony (IC 35-44-3-2);
- (17) resisting law enforcement as a Class B felony or Class C felony (IC 35-44-3-3);
- (18) escape as a Class B felony or Class C felony (IC 35-44-3-5);
- (19) trafficking with an inmate as a Class C felony (IC 35-44-3-9);
- (20) **criminal gang intimidation** (IC 35-45-9-4);
- (21) stalking as a Class B felony or Class C felony (IC 35-45-10-5);
- (22) incest (IC 35-46-1-3);
- (23) dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1);
- (24) dealing in methamphetamine (IC 35-48-4-1.1);
- (25) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
- (26) dealing in a schedule IV controlled substance (IC 35-48-4-3); or
- (27) dealing in a schedule V controlled substance (IC 35-48-4-4).

(c) A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Class B felony.

As added by P.L.247-1999, SEC.1. Amended by P.L.14-2000, SEC.76; P.L.17-2001, SEC.17; P.L.222-2001, SEC.5; P.L.151-2006, SEC.21.

IC 35-50-2

Chapter 2. Death Sentence and Sentences for Felonies and Habitual Offenders

IC 35-50-2-1.4

"Criminal **gang**" defined

Sec. 1.4. For purposes of section 15 of this chapter, "criminal **gang**" means a group with at least three (3) members that specifically:

(1) either:

(A) promotes, sponsors, or assists in; or

(B) participates in; or

(2) requires as a condition of membership or continued membership; the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).

As added by P.L.109-2006, SEC.2. Amended by P.L.192-2007, SEC.12.

IC 35-50-2-9

Death penalty sentencing procedure

Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is an individual with mental retardation.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

- (A) Arson (IC 35-43-1-1).
- (B) Burglary (IC 35-43-2-1).
- (C) Child molesting (IC 35-42-4-3).
- (D) Criminal deviate conduct (IC 35-42-4-2).
- (E) Kidnapping (IC 35-42-3-2).
- (F) Rape (IC 35-42-4-1).
- (G) Robbery (IC 35-42-5-1).
- (H) Carjacking (IC 35-42-5-2)
- (I) **Criminal gang activity (IC 35-45-9-3).**
- (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure person or damage property.

(3) The defendant committed the murder by lying in wait.

(4) The defendant who committed the murder was hired to kill.

(5) The defendant committed the murder by hiring another person to kill.

(6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, or law enforcement officer, and either:

(A) the victim was acting in the course of duty; or

(B) the murder was motivated by an act the victim performed while acting in the course of duty.

(7) The defendant has been convicted of another murder.

(8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.

(9) The defendant was:

(A) under the custody of the department of correction;

(B) under the custody of a county sheriff;

(C) on probation after receiving a sentence for the commission of a felony; or

(D) on parole;

at the time the murder was committed.

(10) The defendant dismembered the victim.

(11) The defendant burned, mutilated, or tortured the victim while the victim was alive.

(12) The victim of the murder was less than twelve (12) years of age.

(13) The victim was a victim of any of the following offenses for which the defendant was convicted:

- (A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.
- (B) Kidnapping (IC 35-42-3-2).
- (C) Criminal confinement (IC 35-42-3-3).
- (D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

- (A) into an inhabited dwelling; or
- (B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

- (1) The defendant has no significant history of prior criminal conduct.
- (2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.
- (3) The victim was a participant in or consented to the defendant's conduct.
- (4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.
- (5) The defendant acted under the substantial domination of another person.
- (6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.
- (7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (l) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

- (1) the aggravating circumstances alleged; or
- (2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

- (1) the death penalty; or
- (2) life imprisonment without parole;

only if it makes the findings described in subsection (l). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

- (1) sentence the defendant to death; or
- (2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (l).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

- (1) conviction or sentence was in violation of the:
 - (A) Constitution of the State of Indiana; or
 - (B) Constitution of the United States;
- (2) sentencing court was without jurisdiction to impose a sentence; and
- (3) sentence:
 - (A) exceeds the maximum sentence authorized by law; or
 - (B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the

defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.

(l) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

- (1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and
- (2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

As added by Acts 1977, P.L.340, SEC.122. Amended by P.L.336-1983, SEC.1; P.L.212-1986, SEC.1; P.L.332-1987, SEC.2; P.L.320-1987, SEC.2; P.L.296-1989, SEC.2; P.L.138-1989, SEC.6; P.L.1-1990, SEC.354; P.L.230-1993, SEC.5; P.L.250-1993, SEC.2; P.L.158-1994, SEC.7; P.L.306-1995, SEC.1; P.L.228-1996, SEC.1; P.L.216-1996, SEC.25; P.L.261-1997, SEC.7; P.L.80-2002, SEC.1; P.L.117-2002, SEC.2; P.L.1-2003, SEC.97; P.L.147-2003, SEC.1; P.L.1-2006, SEC.550; P.L.99-2007, SEC.213.

IC 35-50-2-15

Criminal gang enhancement

Sec. 15. (a) This section does not apply to an individual who is convicted of a felony offense under IC 35-45-9-3.

(b) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed a felony offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally:

- (1) was a member of a criminal **gang** while committing the offense; and
- (2) committed the felony offense at the direction of or in affiliation with a criminal **gang**.

(c) If the person is convicted of the felony offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(d) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally was a

member of a criminal **gang** while committing the felony offense and committed the felony offense at the direction of or in affiliation with a criminal **gang** as described in subsection (b), the court shall:

- (1) sentence the person to an additional fixed term of imprisonment equal to the sentence imposed for the underlying felony, if the person is sentenced for only one (1) felony; or
- (2) sentence the person to an additional fixed term of imprisonment equal to the longest sentence imposed for the underlying felonies, if the person is being sentenced for more than one (1) felony.
- (e) A sentence imposed under this section shall run consecutively to the underlying sentence.
- (f) A term of imprisonment imposed under this section may not be suspended.
- (g) For purposes of subsection (c), evidence that a person was a member of a criminal **gang** or committed a felony at the direction of or in affiliation with a criminal **gang** may include expert testimony pursuant to the Indiana Rules of Evidence that may be admitted to prove that particular conduct, status, and customs are indicative of criminal **gang** activity. The expert testimony may include the following:
 - (1) Characteristics of persons who are members of criminal **gangs**.
 - (2) Descriptions of rivalries between criminal **gangs**.
 - (3) Common practices and operations of criminal **gangs**.
 - (4) Behavior of criminal **gangs**.
 - (5) Terminology used by members of criminal **gangs**.
 - (6) Codes of conduct, including criminal conduct, of particular criminal **gangs**.
 - (7) Types of crimes that are likely to be committed by a particular criminal **gang**.

As added by P.L.109-2006, SEC.3.

IC 32-21-6

Chapter 6. Psychologically Affected Properties

IC 32-21-6-1

"Agent" defined

Sec. 1. As used in this chapter, "agent" means a real estate agent or other person acting on behalf of the owner or transferee of real estate or acting as a limited agent.

As added by P.L.2-2002, SEC.6.

IC 32-21-6-2

"Limited agent" defined

Sec. 2. As used in this chapter, "limited agent" means an agent who, with the written and informed consent of all parties to a real estate transaction, is engaged by both the seller and buyer or both the landlord and tenant.

As added by P.L.2-2002, SEC.6.

IC 32-21-6-3**"Psychologically affected property" defined**

Sec. 3. As used in this chapter, "psychologically affected property" includes real estate or a dwelling that is for sale, rent, or lease and to which one (1) or more of the following facts or a reasonable suspicion of facts apply:

- (1) That an occupant of the property was afflicted with or died from a disease related to the human immunodeficiency virus (HIV).
- (2) That an individual died on the property.
- (3) That the property was the site of:
 - (A) a felony under IC 35;
 - (B) **criminal gang (as defined in IC 35-45-9-1) activity**;
 - (C) the discharge of a firearm involving a law enforcement officer while engaged in the officer's official duties; or
 - (D) the illegal manufacture or distribution of a controlled substance.

As added by P.L.2-2002, SEC.6.

IC 32-21-6-4**"Transferee" defined**

Sec. 4. As used in this chapter, "transferee" means a purchaser, tenant, lessee, prospective purchaser, prospective tenant, or prospective lessee of the real estate or dwelling.

As added by P.L.2-2002, SEC.6.

IC 32-21-6-5**Disclosure not required**

Sec. 5. An owner or agent is not required to disclose to a transferee any knowledge of a psychologically affected property in a real estate transaction.

As added by P.L.2-2002, SEC.6.

IC 32-21-6-6**Refusal to disclose; misrepresentation**

Sec. 6. An owner or agent is not liable for the refusal to disclose to a transferee:

- (1) that a dwelling or real estate is a psychologically affected property; or
- (2) details concerning the psychologically affected nature of the dwelling or real estate.

However, an owner or agent may not intentionally misrepresent a fact concerning a psychologically affected property in response to a direct inquiry from a transferee.

As added by P.L.2-2002, SEC.6.